Supreme Court, U.S.
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No. 95-1619

In the Supreme Court of the United States

OCTOBER TERM, 1995

MABLE SHANGREAU, PETITIONER

v.

BRUCE BABBITT, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

ALBERT M. FERLO, JR.
JACQUES B. GELIN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

JOHN LESHY
Solicitor

MARCIA M. KIMBALL
Attorney
Office of the Solicitor
Department of the Interior
Washington, D.C. 20240

20pp

QUESTION PRESENTED

Whether Section 3(*l*) of the White Earth Land Settlement Act, 25 U.S.C. 331 note, insofar as it incorporates a now-repealed Minnesota statute that limited the right of an illegitimate child to inherit by right of representation through his father, violates the Due Process Clause of the Fifth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A13) is reported at 68 F.3d 208. The opinion of the district court (Pet. App. A14-A29) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 4, 1995. A petition for rehearing was denied on January 4, 1996. Pet. App. A75. The petition for a writ of certiorari was filed on April 3, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Through a series of treaties, the Chippewa Indian Tribe ceded substantial territory in Minnesota to the United States in return for payments and the creation, in 1879, of the White Earth Reservation. See 16 Stat. 719; *United States* v. *Minnesota*, 270 U.S. 181, 196-198 (1926). With the General Allotment Act of 1887, 24 Stat. 388, Congress began a policy of breaking up tribal reservations and granting parcels to individual Indians through "trust patents." See Pet. App. A2; *Hagen* v. *Utah*, 114 S.Ct. 958, 961 (1994).

In 1889, the Nelson Act, 25 Stat. 642, applied the allotment policy to the White Earth Reservation, which then covered thirty-six townships and 830,000 acres. Under the Nelson Act, each full- or mixed-blood allottee received a trust patent under which the United States would hold the allotted land in trust for twenty-five years before conveying the title in fee to the allottee. During the trust period, each allotment would be tax-exempt and could not be alienated or encumbered without the approval of the Secretary of the Interior. Over nearly twenty years, the government issued about 8,000 allotments. Executive Orders signed in 1927, 1932, and 1933 extended the trust periods on most White Earth tracts. See Pet. App. A2-A3.

In the Appropriation Acts of 1906 and 1907, Congress adopted the so-called Clapp Amendment, Act of June 21, 1906, ch. 3504, 34 Stat. 325, 353, which purported to remove all restrictions on the alienation of land allotted to adult mixed-blood Indians on the White Earth Reservation. The Clapp Amendment resulted in the swift transfer to private parties of the vast majority of reservation land from Indians who

had been granted fee simple ownership. See, *e.g.*, S. Rep. No. 192, 99th Cong., 1st Sess. 6 (1985). Subsequently, courts interpreting the Clapp Amendment emphasized its distinction between full- and mixed-blood Indians and concluded that full-blood Indians continued to enjoy a limited trust relationship under the Amendment. With respect to mixed-blood Indians, however, the Clapp Amendment was widely interpreted as having ended the trust relationship between them and the federal government. By 1934, when Congress extended indefinitely all trust periods then in existence, see Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984, 25 U.S.C. 461 *et seq.*; *County of Yakima* v. *Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 254-256 (1992), most of the allotted land in the White Earth Reservation had already been sold, lost through tax forfeiture, or otherwise alienated. Pet. App. A3, A4.

In the late 1970s, several events forced a change in the federal government's view of the status of lands sold by mixed-blood Indians on the White Earth Reservation. In *State* v. *Zay Zah*, 259 N.W.2d 580 (Minn. 1977), cert. denied, 436 U.S. 917 (1978), the Minnesota Supreme Court held that the Clapp Amendment could not unilaterally abrogate the trust status of a White Earth allotment. In 1979, the Solicitor of the Department of the Interior issued an opinion that, rejecting the Department's longstanding view, concluded that the Department was required to determine the heirs of any White Earth mixed-blood Chippewa who died holding a beneficial interest in a White Earth allotment. The 1979 opinion concluded that land titles derived from an Indian's alienation of his allotment were invalid, whether the alienation resulted from a tax forfeiture, state pro-

bate award, or "other forms of involuntary alienation," such as purchase, without the Department's approval, from mixed-blood Chippewas under 21 years of age. See Pet. App. A4. The combined effect of *Zay Zah* and the 1979 Solicitor's opinion was to cloud title to more than 100,000 acres of Minnesota land, resulting in "social and economic chaos." *Littlewolf* v. *Lujan*, 877 F.2d 1058, 1061 (D.C. Cir. 1989), cert. denied, 493 U.S. 1043 (1990).

2. On March 24, 1986, Congress resolved the title problem by enacting the White Earth Reservation Settlement Act (WELSA or Act), Pub. L. No. 99-264, 100 Stat. 61 (codified, as amended, at 25 U.S.C. 331 note). The Act extinguished claims for land and damages by White Earth allottees and their heirs in return for compensation. The Act directed the Secretary of the Interior to determine the allottees or heirs entitled to receive compensation, and to make such heirship determinations as might be necessary to provide such compensation. In developing procedures for implementing the Act, the Bureau of Indian Affairs (BIA) analyzed which laws would be applicable to any heirship determinations. The BIA concluded that the laws relating to the inheritance of personal property in effect in the jurisdiction in which a decedent was domiciled on the date of death would likely be applicable. Pet. App. A4-A5.

The prospect of being required to apply numerous state (and perhaps foreign) intestacy laws over a period of more than 80 years prompted the BIA to request Congress to narrow the scope of the applicable laws. Congress responded by enacting the Indian Law Technical Amendments Act of 1987, Pub. L. No. 100-153, 101 Stat. 886 (1987 Act). Section 6(a) of

the 1987 Act, by adding Section 3(*l*) to WELSA, defined "heir" as

> a person who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law, or one who is determined under section 9, *by the application of the inheritance laws of Minnesota in effect on March 26, 1986* [the date WELSA was enacted] * * *, to be entitled to receive compensation payable under section 8.

Pet. App. A58 (emphasis added). Provisions of Minnesota law in effect on March 26, 1986, included Minn. Stat. Ann. §§ 525.16(1) and (4)(a) (West 1996 Supp.) and Minn. Stat. Ann. § 525.172 (West 1996 Supp.) (repealed effective January 1, 1987). By the former two sections, a one-third share of personal property descends to the surviving spouse and the balance of the estate descends "[i]n equal shares to the surviving children and to the issue of deceased children by right of representation."[1]

Section 525.172 dealt with illegitimate children in the context of intestate succession. It provided (emphasis added):

> A child born to a mother who was not married to the child's father when the child was conceived nor when the child was born shall inherit from the mother the same as if the child was conceived or born to her while she was married, and also from the person who in writing and before a competent

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[1] Representation is the principle upon which the issue of a deceased person take or inherit the share of the estate that their immediate ancestor would have taken, if living. *In re Paterson's Estate*, 76 P.2d 138, 143 (Cal. App. 1938).

> witness shall have declared himself to be the child's father, provided such writing or an authenticated copy thereof shall be produced in the proceeding in which it is asserted or from the person who has been determined to be the father of such child in a paternity proceeding before a court of competent jurisdiction; *but such child shall not inherit from the kindred of the father by right of representation.*

That statute was repealed, for estates of decedents who died after December 31, 1986, by the Minnesota Legislature's adoption of the Uniform Probate Code (UPC). See Minn. Stat. Ann. § 524.2-109 (West 1996). The UPC would not bar an illegitimate child from inheriting by right of representation through the father. See Pet. App. A6-A7.

3. The allotment at issue in this case was the original allotment of Mo-kah-ah-mo-qaince, or Lizzie Pemberton, White Earth Allottee # 0-3420. The Department of the Interior determined that she had improperly transferred her allotment on July 30, 1908, when she was under the age of 21, and that she was thus entitled to compensation as of that date (plus approximately 65 years of interest, as of the date of her death on May 3, 1974). The Department determined that Richard C. Beaupre was one of her heirs, entitled to receive a one-seventh interest in the compensation to which she would have been entitled. See Pet. App. A7, A19.

In determining the heirs of Richard C. Beaupre, a Department of the Interior administrative law judge (ALJ) issued a Final Order Determining Heirs (Pet. App. A36-A42) finding the following facts:

1. Richard C. Beaupre died on August 1, 1986.

2. Richard C. Beaupre was survived by his second wife, Philomene E. Azure Beaupre. He had previously been married to Margaret Rain.

3. Richard C. Beaupre had three sons by Philomene Azure, all of whom survived him.

4. Richard C. Beaupre had a son by Margaret Rain, Charles Roy Beaupre, who died on March 12, 1976.

5. Charles Roy Beaupre, when he died on March 12, 1976, was survived only by an illegitimate child, Richard Charles Beaupre, who was born October 22, 1973, to petitioner Mabel Shangreau. While Charles Roy Beaupre acknowledged paternity of Richard Charles Beaupre, the child was nevertheless illegitimate.

Pet. App. A37, A39-A41, A46. The ALJ also concluded (Pet. App. A39, A50-A53) that Minn. Stat. Ann. § 525.172 (West Supp. 1996) had been incorporated into WELSA by the Indian Law Technical Amendments Act of 1987.[2] Based on the foregoing, the ALJ determined that Minn. Stat. Ann. § 525.172 prevented Richard Charles Beaupre from inheriting from his paternal grandfather by right of representation of his predeceased father. Pet. App. A41. The ALJ also determined that she had no jurisdiction to consider the constitutionality of the statutory provisions that required that result. Pet. App. A47-A48.

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[2] On the facts of this case, the same result would have occurred without the 1987 amendment to WELSA. Richard C. Beaupre died on August 1, 1986, while he was domiciled in Red Wing, Minnesota. See Pet. App. A37. The Minnesota law in effect on the date of his death was the same as that incorporated into WELSA.

Because Richard Charles Beaupre died on March 1, 1992 (Pet. App. A8), and his sole heir was his mother, petitioner Mable Shangreau, she would have inherited any share which he might have inherited in the compensation resulting from the transfer of the Lizzie Pemberton allotment. Petitioner appealed the ALJ's heirship determination concerning her illegitimate son to the Interior Board of Indian Affairs (IBIA), which affirmed the ALJ's determinations. The IBIA also declined to consider petitioner's constitutional challenge on the ground that it lacked authority to do so. Pet. App. A30-A33.

4. Petitioner then filed this action seeking judicial review of the Department's decision in the United States District Court for the District of Minnesota. The district court first concluded that it had subject matter jurisdiction under 28 U.S.C. 1331 over petitioner's constitutional challenge to the heirship determination concerning her son. Pet. App. A20-A21 & n.8. The court next agreed with the ALJ's conclusion that the law "in effect" in Minnesota on March 26, 1986 was the pre-UPC law of intestacy, which on its face barred petitioner's son from inheriting from his father by right of representation, *id.* at A22-A23, and it rejected petitioner's contention that WELSA's incorporation of Minnesota's pre-1986 heirship law offends equal protection principles implicit in the Due Process Clause of the Fifth Amendment. Pet. App. A24-A28.

The court explained that "WELSA is a remedial statute intended to resolve finally and as fairly and equitably as possible present and future disputes over land on the White Earth Reservation." Pet. App. A24. For that reason, the court concluded that WELSA is analogous to the New York intestacy statute that

this Court upheld in *Lalli* v. *Lalli*, 439 U.S. 259 (1978), which (by requiring that paternity be established before the death of the father) advanced the strong governmental interests in protecting decedents' estates against spurious claims and in promptly and conclusively winding up those estates soon after the decedent's death. Pet. App. A24-A25. The court noted that "the ability of illegitimate children to receive property down the paternal line clearly raises issues of proof not presented by distributions to either legitimate children or illegitimate children down the maternal line," *id.* at A26, and that the federal government's interest in finality is especially weighty here, because potential claimants under WELSA "may exist due not only to blood relationships but also 'diffuse questions of affection and affinity.'" *Id.* at A28 (quoting *Weber* v. *Aetna Cas. & Surety Co.*, 406 U.S. 164, 175 (1972)). Indeed, the court noted, petitioner's case proves the point, since she essentially seeks to inherit (through her illegitimate child) from Richard C. Beaupre, to whom she bears no relationship of affinity or consanguinity. Pet. App. A28. Accordingly, the court concluded, "there is a logical relationship between the federal government's evident and substantial interest in accurately and efficiently settling claims to the disputed lands in Minnesota and WELSA's treatment of illegitimate children in determining their heirship status." *Ibid.*

5. The court of appeals affirmed. Pet. App. A1-A13. After agreeing with the district court's view that the federal courts have subject matter jurisdiction under 28 U.S.C. 1331 over constitutional challenges to the heirship determination, Pet. App. A9, the court concluded that WELSA's definition of "heir" is substantially related to a permissible governmental interest.

The court explained that "the federal government has an interest in the definitive and fair determination of heirship disputes so it can distribute the compensation funds and thereby extinguish any potential claims that the heirs of a White Earth allottee might have and thus clear title for innocent third parties." *Id.* at A11. The court agreed with the district court's conclusion that that governmental interest "is analogous to the state's interest in the just and orderly disposition of property at death articulated in *Lalli*." Pet. App. A11. Relying on *Eskra* v. *Morton*, 524 F.2d 9 (7th Cir. 1975) (Stevens, J.), the court also concluded that problems of proof of paternity, as opposed to maternity, justify different treatment of illegitimate children's right to inherit by right of representation.

ARGUMENT

Petitioner contends that WELSA, by incorporating pre-1986 Minnesota law that limited the right of illegitimate children to inherit by right of representation through the father, unconstitutionally discriminates against illegitimate children. The decision below is correct and does not conflict with any decision of this Court or of another court of appeals. Further review is therefore unwarranted.

1. Petitioner's principal contention (Pet. App. 15-20) is that the Court should summarily reverse the judgment of the court of appeals, because it is inconsistent with *Trimble* v. *Gordon*, 430 U.S. 762 (1977). That contention is incorrect. *Trimble* struck down a state statute that completely barred illegitimate children from inheriting from their natural fathers when the father died intestate. The Court recognized (*id.* at 770-771), however, that States providing a legal

framework for the inheritance rights of illegitimate children have some flexibility to choose "a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." The Court also specifically "reaffirm[ed] th[e] view" that "judicial deference is appropriate when the challenged statute involves the substantial state interest in providing for the stability of . . . land titles and in the prompt and definitive determination of the valid ownership of property left by decedents." *Id.* at 767 n.12 (internal quotation marks omitted).

The Court applied that principle one year after its decision in *Trimble*, when it upheld a New York statute that required paternity to be established during the life of the putative father. See *Lalli* v. *Lalli*, 439 U.S. 259 (1978). Speaking for the controlling plurality, Justice Powell, who had authored *Trimble*, concluded that the New York rule substantially advanced the important state purpose "to provide for the just and orderly disposition of property at death," 439 U.S. at 268, by assuring that all potential claimants to an estate can be timely served with process and by preventing spurious claims that can be difficult to prove or disprove after the putative father's death, *id.* at 268-271.[3] The courts below correctly concluded that the state interest that the Court found sufficient to support the legislative classification in *Lalli* is indistinguishable from the interest in the prompt settlement of title and compensation questions that Congress addressed in WELSA.

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[3] Then-Justice Rehnquist and Justice Blackmun would have upheld the statute on an even more deferential standard, thus providing the majority for the judgment of the Court. *Lalli*, 439 U.S. at 276-277.

Indeed, consistent with *Trimble*'s admonition, WELSA does not bar the claims of all illegitimate children, but only those who base their claim to inherit on a right of representation. Congress reasonably could conclude that such claims present special problems of proof, in addition to the concerns generally associated with establishing paternity after the putative father's death. That is because a paternity determination generally involves only the child and his parents. When the child takes by representation, however, he seeks to inherit from a third party on the basis of a determination of paternity (such as the acknowledgement on which petitioner relies) in which the third party did not participate. It is not unreasonable for a legislature to limit or preclude such claims as a means to prevent fraud.

Petitioner's extended argument (Pet. 16-18) purporting to show how the legislative policies behind WELSA would not be impaired by allowing her now-deceased illegitimate son to claim by right of representation does not impugn the correctness of the court of appeals' decision. As an initial matter, as the district court observed (Pet. App. A28), petitioner's attempt to inherit indirectly from Richard C. Beaupre well illustrates the type of unusual claim that, if allowed, might subvert the congressional aim of speedily and conclusively settling the White Earth Reservation problem. More fundamentally, this Court has recognized that the government's use of categorical rules will necessarily deny valued goods to some illegitimate children who, under a case-by-case approach, might establish their entitlement consistently with the broad statutory purposes. Indeed, *Lalli* upheld the New York scheme on the ground that, as a general matter, it substantially

served important state interests, even though those interests were not served in some cases, since "few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results." 439 U.S. at 273 (plurality opinion).

2. Petitioner contends in the alternative (Pet. 20-23) that plenary review is warranted to resolve a purported "tension" (*id.* at 14) between this Court's decisions in *Trimble* and *Lalli*. Petitioner argues (Pet. 21) that this Court's post-*Lalli* decisions in *Mills* v. *Habluetzel*, 456 U.S. 91 (1982); *Pickett* v. *Brown*, 462 U.S. 1 (1983), and *Clark* v. *Jeter*, 486 U.S. 456 (1988), cast doubt on the continuing vitality of *Lalli*. In those cases, this Court struck down state statutes that required that paternity proceedings on behalf of illegitimate children be brought within a limited time after the child's birth (one year, two years, and six years, respectively). In petitioner's view, if "a child cannot be required to establish paternity before his or her majority, then neither should a state require paternity to be established before death in order to inherit by intestate succession," as *Lalli* held a State may do. Pet. 22.

Mills, *Pickett*, and *Jeter*, however, did not involve the state's interest in winding up estates swiftly—*i.e.*, the interest that supported the result in *Lalli* and that both courts below found analogous to the situation presented by this case. Notwithstanding the post-*Lalli* decisions on which petitioner relies, this Court has continued to recognize the validity of "statutory provisions that have an evident and substantial relation to the [government's] interest in providing for the orderly and just distribution of a decedent's property at death." *Reed* v. *Campbell*, 476 U.S. 852, 855 (1986) (citing *Lalli*). Petitioner's rea-

soning overlooks the different legislative judgments involved in, on the one hand, barring a child from suing to establish paternity (ordinarily, in order to obtain support from the putative father, who is still alive, see, *e.g.*, *Jeter*, *supra*) and, on the other hand, limiting the circumstances under which a child may seek to establish paternity so as to make a claim to the putative father's estate. Nothing in *Mills*, *Pickett*, or *Jeter* purports to speak to the latter question.

3. There is no merit to petitioner's claim (Pet. 21-22) that review is warranted because the Eleventh and Seventh Circuits have reached conflicting conclusions on the validity of certain state intestacy laws that are incorporated by reference by the Social Security Act. Compare *Daniels* v. *Sullivan*, 979 F.2d 1516 (11th Cir. 1992) (finding state law invalid), with *Haas* v. *Chater*, 79 F.3d 559 (7th Cir. 1996) (upholding state law). As the district court pointed out (Pet. App. A27-A28), the Social Security scheme is based on a child's direct blood and dependency relationship with the deceased that is not in all respects analogous to the aims furthered by WELSA. Moreover, this case arises under a federal statute of limited scope that incorporates a provision of state law that has been repealed, and it concerns the unique problems associated with claims by right of representation—problems that have not arisen in the Social Security context. In any event, on May 15, 1996, the Seventh Circuit vacated the panel decision in *Haas* and ordered the case reheard en banc. If the Seventh Circuit adheres to its analysis under the Social Security Act upon rehearing, there will be time enough then for this Court to consider whether to grant review in order to address the distinct context, under

the Social Security Act, in which the division of authority has arisen.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

ALBERT M. FERLO, JR.
JACQUES B. GELIN
Attorneys

JOHN LESHY
Solicitor

MARCIA M. KIMBALL
Attorney
Office of the Solicitor

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